

### **Remarks**

The present amendment amends claim 54 to specify that the material of the elongate member and the attachment head are restricted to titanium or a bioabsorbable material. The material deleted in claim 54, ie surgical grade stainless steel, for the elongate member is included in new claim 55 which is the same as former claim 54.

The claims presently stand rejected under 35 USC 103(a) over US Patent No. 4,762,453 to DeCaro. This reference relates to a two part fastener which is designed to fasten insulation to a tectum. As previously stated, the Decaro design differs from the present invention which is designed as a tissue anchor. The claims are directed now to components made from titanium or a bioabsorbable material. The Examiner notes the differences of the present invention and the primary reference, including, for example, the claimed dimensions, the size of the modular attachment head, and that the attachment head includes an opening, and that the spring steel of Decaro could be substituted with the implantable materials of the present invention. The Examiner argues that the secondary reference (US Patent No. 2,033,039 to Limpert) teaches a modular head that is substantially the same size or smaller than the helical structure. The features that the Examiner glosses over are those features which permit the claimed invention to be useful for the claimed tissue anchor. There is no motivation to modify Decaro, to dimension the structure as claimed, or to make the structure from the infinitely more difficult and expensive titanium or biabsorbable material. It is respectfully submitted that the rejection is based incorrectly on hindsight from the present invention, and is in error. It is submitted that this error extends as well to the device including an elongate member made from surgical grade stainless steel. Once again, there is no reason that one skilled in the art would consider making the claimed modifications, or making the Decaro device from more expensive surgical grade stainless steel. It is only based on hindsight from the present invention that one would consider making these changes which enable the use of the invention as a tissue anchor.

Accordingly, it is submitted that the application is in condition for allowance, and notice to such effect is earnestly solicited.

Respectfully submitted,

HUDAK, SHUNK & FARINE CO. LPA



Laura F. Shunk  
Reg. No. 31,423

2020 First Street, Suite 307  
Cuyahoga Falls, OH 44221  
Telephone: (330) 535-2220  
Facsimile: (330)-535-1435

**ATTORNEY DOCKET NO. ORTHO-A-CIP-PCT-US**